Public Prosecutor v Shariff bin Saad

HIGH COURT (ALOR SETAR) — CRIMINAL TRIAL NO 57-1-1989
KC VOHRAH J
21 SEPTEMBER 1992

Evidence *— Information leading to fact discovered — Admissibility — Whether information already known to police — Evidence Act 1950 s 27*

The accused was charged with possession of five live rounds of ammunition, an offence punishable under s 57(10)(b) of the Internal Security Act 1960. The prosecution led evidence to show that the accused was arrested on 10 January 1989. Three weeks later on 31 January 1989, while being interrogated, the accused told the Criminal Investigation Department (CID) that he had kept five rounds of ammunition in the Sungei Durian mosque in Pokok Sena. He was taken to the mosque where the rounds were recovered. When the accused gave evidence he claimed that three days after his arrest he had told his original interrogators, the Special Branch, that his cousin had told him about the rounds. He claimed that when he was interrogated on 31 January 1989, he said the same thing. He denied admitting that he had kept the rounds in the mosque.

Held, acquitting the accused:
It was probably true that the Special Branch handed the accused over to the CID to interrogate because he had admitted to the Special Branch the existence of the rounds. It was also reasonable to infer that the Special Branch must have informed the CID of the existence of the rounds. There were therefore grave doubts as to the admissibility, under s 27 of the Evidence Act 1950, of the accused's statement to CID.

[Bahasa Malaysia summary

Si tertuduh telah dituduh memiliki lima butir amunisi hidup, suatu kesalahan yang boleh dihukum di bawah s 57(10)(b) Akta Keselamatan Dalam Negeri 1960. Pihak pendakwa telah membuktikan bahawa si tertuduh telah ditangkap pada 10 Januari 1989. Tiga minggu kemudian, pada 31 Januari 1989, semasa si tertuduh disoal siasat, beliau telah memberitahu Jabatan Penyiasatan Jenayah ('jabatan itu') bahawa beliau telah menyimpan lima butir amunisi di Masjid Sungei Durian, Pokok Sena. Beliau telah di bawa ke masjid itu di mana amunisi itu dijumpai. Bila si tertuduh memberi keterangan, beliau mendakwa bahawa tiga hari selepas penangkapannya, beliau telah memberitahu penyoal siasat asal, Cawangan Khas, yang sepupunya telah memberitahunya tentang amunisi itu. Si tertuduh juga mendakwa bahawa apabila disoal siasat pada 31 Januari 1989, beliau telah memberi maklumat yang sama. Si tertuduh menafikan yang beliau telah mengaku menyimpan amunisi di masjid itu.

Diputuskan, membebaskan si tertuduh:
Mungkin benar behawa Cawangan Khas telah menyerahkan si tertuduh kepada jabatan itu untuk disoal siasat, kerana si tertuduh telah mengaku kepada Cawangan Khas tentang kewujudan amunisi itu. Adalah juga munasabah membuat kesimpulan bahawa Cawangan Khas telah memberitahu jabatan itu tentang kewujudan amunisi itu. Dengan itu, terdapat keraguan yang serius tentang kebolehterimaan pernyataan si tertuduh kepada jabatan itu, di bawah s 27 Akta Keterangan 1950.]

Cases referred to
1 *PP v Liew Sam Seong* [1982] 1 MLJ 223 (refd)
2 *Thimma v The State of Mysore* AIR 1971 (SC) 1871 (refd)

Legislation referred to
Evidence Act 1950 s 27
Internal Security Act 1960 ss 57, 73

Mohamad Saman bin Mohd Ramli (Deputy Public Prosecutor) for the Public Prosecutor.
Sabri bin Ahmad (*Sabri Ahmad & Khairul Azman*) for the accused.

Cur Adv Vult

KC Vohrah J: I called upon the accused to make his defence on an amended charge which reads thus:

> That you on or about 10 January 1989 at Masjid Sungei Durian, Pokok Sena, in the District of Kota Setar, in the state of Kedah, without lawful excuse in a security area as proclaimed by the Yang di-Pertuan Agong vide Federal Gazette PU (A) 148 dated 15 May 1969, did have under your control ammunitions, to wit, five (5) rounds of 5.56 mm calibre bullets, without lawful authority and that you have thereby committed an offence punishable under s 57(1)(b) of the Internal Security Act 1960.

The prosecution's case was that on 10 January 1989 the accused was arrested under s 73(1) of the Internal Security Act 1960. About three weeks later, on 31 January 1989, while being interrogated by Assistant Superintendent of Police Abdul Rahman, the accused told the police officer that he had kept five rounds of ammunition wrapped in paper on top of the *mimbar* (the pulpit) in the Sungei Durian mosque in Pokok Sena and that he could show the said location in the following language:

> Saya ada simpan peluru 5 biji berbungkus dengan kertas diatas mimbar baca khutbah di Masjid Sungei Durian, Pokok Sena. Saya boleh tunjuk tempat tersebut.

ASP Abdul Rahman reduced the information into writing in his diary (P10). The accused then led the officer and his men to the said mosque. Whilst in the mosque he pointed to the top of the *mimbar* and said that he had kept ammunition on top of the *mimbar*, 'Saya simpan peluru atas mimbar.'

Inspector Rotzarn searched the covered top of the *mimbar* and discovered five rounds of ammunition and a slug wrapped in a piece of paper lying thereon. According to the evidence of the armaments officer, ASP Haris, the five rounds of ammunition were serviceable.

At the close of the prosecution's case, on a prima facie basis, I was satisfied that prosecution had established on the primary facts adduced that the accused was in control of the five rounds of ammunition and that the rounds were serviceable. However, I found that the facts did not show his control of them on the day he led the police to their discovery. The control was in respect of the time before his arrest and accordingly I amended the charge, as state earlier, to reflect that. The accused claimed trial to the amended charge.

In making his defence, the accused elected to give his evidence on oath. His evidence was that after he was arrested on 10 January 1989 he was eventually brought to Police Headquarters that day and placed in a lock-up. Then, for about three weeks, he was interrogated by the police. He said that about three or four days before 31 January 1989 he told his interrogator (of the Special Branch) that his cousin had stated that there was ammunition in the area of the Sungei Durian mosque. ('Ada peluru di masjid Durian sebab adik sepupu saya kata ada peluru di masjid, Sungei Durian, di kawasan masjid Sungei Durian.') He said that on 31 January 1989 he was again interrogated (this time by ASP Abdul Rahman) and that he had told his interrogator that there was ammunition at Sungei Durian mosque as his cousin's brother had narrated that. ('Ada peluru di Masjid Sungei Durian sebab adik saudara saya cerita.') He denied stating that he had told them he had placed five rounds of ammunition wrapped in paper on top of the *mimbar*.

The cross-examination of ASP Abdul Rahman and Inspector Rotzarn was aimed at showing up discrepancies between their testimony with the ultimate object of showing that the accused did not give the bits of information on 31 January 1989 in the interrogation room and in the mosque which led to the discovery of the ammunition. And it was put to both the officers that the accused did not give those bits of information. But when the accused gave his testimony he did not rely on what had been put across as the defence. Instead, as stated earlier, he said he did tell his interrogator (on 31 January 1989) that there was ammunition at the Sungei Durian mosque as his cousin had narrated that. And he said that three or four days before 31 January 1989 he had told other police interrogators that his cousin's brother had stated that there was ammunition in the area of the Sungei Durian mosque.

I shall deal later with the question whether he had earlier given information to the Special Branch about the whereabouts of the bullets before giving some information to ASP Abdul Rahman and with the ensuing implications. For the moment the question is whether the accused gave ASP Abdul Rahman the two bits of information which led to the discovery of the ammunition. My view is that he did.

In evaluating all the evidence in the case I am left in no doubt that the accused gave the two bits of information to ASP Abdul Rahman on 31 January 1989. Although there were discrepancies in the evidence of ASP

A Abdul Rahman and Inspector Rotzarn as to where Inspector Rotzarn sat at the investigation table on 31 January 1989 and how long the interrogation of the accused took place, these are minor discrepancies that do not detract from their evidence that the accused on 31 January 1989 made a statement to the ASP that he had kept five rounds of ammunition wrapped in paper on top of the *mimbar* at Masjid Sungei Durian and that the information was B immediately reduced into writing in P10.

The question is whether the provisions of s 27 of the Evidence Act 1950 can be invoked in this case. And in this context, as stated earlier, I would need to consider if the accused had given information to the Special Branch interrogator earlier about the whereabouts of the ammunition.

C From the prosecution evidence it is clear that since the date of the arrest of the accused, but before the date ASP Abdul Rahman interrogated him, the accused was held by the Special Branch for interrogation. And it is probably true that the accused did tell his interrogators at the Special Branch about the ammunition at the Sungei Durian mosque. And that was why he was handed over by the Special Branch to the CID for interroga- D tion. As stated by ASP Abdul Rahman he was informed by his superior officer in the CID to interrogate the accused who had been held by the Special Branch as the accused 'had information of CID interest'. He said, however, that he did not know what it was and he did not communicate with the Special Branch. He said, 'From past experience the Special Branch E are not willing to discuss with CID their interrogation. Yes, I had to start fresh with the accused. ' In regard to the 'information of CID interest' the ASP agreed that it could be inferred that the offence of being in control of ammunition had been earlier disclosed to the Special Branch as, when he interrogated the accused, that was the only offence that was disclosed.

I find, in the circumstances, that it is reasonable to infer that the Special F Branch knew of the existence of the ammunition in the Sungei Durian mosque and most probably that it was on top of the mimbar and, again most probably, that the accused had put it there before the accused told ASP Abdul Rahman of the same thing.

Counsel for the accused relied on *PP v Liew Sam Seong*[1] to say that since G the Special Branch had knowledge of the existence of the ammunition before the accused gave information to the CID which led to the discovery of the bullets, the prosecution cannot rely on s 27 of the Evidence Act 1950 to say that the discovery was as a result of information given to the police by the accused.

In *Liew*'s case[1] the accused was charged with the offence of having H ammunition under his control. The prosecution relied on the information of the accused given to the police on 28 December which led to the alleged discovery of the ammunition at a certain place. Mohamed Azmi J (as he then was) on the basis of this and some circumstantial evidence, called upon the accused to make his defence on the charge. The accused denied I he was staying at the place at the material time and denied knowledge of the ammunition. He claimed that his communist friend was the paying tenant of the premises. His Lordship in evaluating all the evidence that was adduced in that case drew the inference that shortly after the accused had been arrested on 18 December, a police party must have gone to the

premises by using a bunch of keys recovered from the accused and had become aware of the ammunition therein. His Lordship held that even if the accused had given the alleged information (on 28 December) to the police, 'the provision of s 27 cannot be invoked and both the information and the fact of discovery are accordingly inadmissible.'. A

It will be noted that his Lordship at p 224 quoted and relied on this passage from *Sarkar on Evidence* (11th Ed) at p 287: B

> Section 27 has frequently been misused by the police and courts should be vigilant about the circumvention of its provisions ... When a fact is once discovered from information received from another source, there can be no discovery again even if any information relating thereto its subsequently extracted from the accused. A device sometimes adopted by the police is to stage a scene and take the accused to the place where the things discovered laid buried or hidden and require him to make a search for them at the spot indicated to the accused ... It has been observed that it has become a normal device of the investigating agency to turn an ordinary recovery into a discovery in order to utilise the provisions of s 27. [*Amin v SA* (1958) 293, 300]. C

In an earlier case, a case of the Supreme Court of India, *Thimma v The State of Mysore*[2] at p 1877, the Supreme Court of India held: D

> Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused ...

The Supreme Court declined to rely on the information given by the accused which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the fact discovered and therefore, the statement conveyancing the information was admissible. The Supreme Court, however, stated that when another person, PW4, was suspected of complicity in the offence of murder, he would have in all probability disclosed to the police of the dead body and other articles at the place where they were found. E F

In our case, the issue is whether ASP Abdul Rahman was aware of the whereabouts of the bullets before he interrogated the accused and that he had information about the bullets from a source other than the accused at that stage? I find it difficult to believe that the Special Branch, notwithstanding that their activities are shrouded in secrecy, would not have given the CID relevant, and by no means secret, information as to why they thought the CID should interrogate the accused. ASP Abdul Rahman had certainly to begin his work on some basic information relating to some offence. And it is reasonable to infer too, that the information related to the accused having made an admission to the Special Branch. It is common knowledge that for security reasons, Special Branch officers seldom reveal their identities in court and it is highly probable they would pass information relating to offences to the CID so that CID officers may investigate them and give evidence in their stead in court. To say that the Special Branch would however refrain from giving their CID counterpart information as regards these offences is thus not plausible. As I had stated earlier I accept that the two bits of information were given to ASP Abdul Rahman on 31 January 1989 and I think it is also reasonable to infer, notwithstanding what he stated in court as regards what information he gave to the CID G H I

A and Special Branch and which was merely to distance himself from the ammunition, that the accused gave similar information to the Special Branch that he had kept five rounds of ammunition on top of the *mimbar*. Bearing that in mind, I think it is highly unlikely that officers from the Special Branch would have remained quiet and not gone to the mosque having regard to the nature of the information; and ascertained that the B ammunition was indeed on top of the *mimbar*. There would not have been any need for the accused to have accompanied the Special Branch officer since the information was so explicit. Thus the defence of the accused does give rise to a high degree of probability that when the accused gave information to ASP Abdul Rahman about the whereabouts of the bullets, the C ASP had prior knowledge of their whereabouts and that the ammunition had already been discovered. I have grave doubts as regards the admissibility of the two bits of information given to ASP Abdul Rahman and I rule them inadmissible. I therefore acquit and discharge the accused.

Accused acquitted.

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Reported by Mathavan Devadas

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